

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.2077 of 1998

DATED: 18-4-2007

Between:

**The Depot Manager,
APSRTC, Hyderabad-II Depot,
Dilsukhnagar, Hyderabad.**

... Petitioner.

And

R.Sanjeeva Reddy,

And another.

... Respondents.

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.2077 of 1998

ORDER:

This writ petition is filed questioning the award dated 6.11.1997 of the Labour Court-I in I.D.No.26 of 1995 whereby it has held that the respondent No.1 is entitled to reinstatement with continuity of service and all attendant benefits with all backwages.

Few facts relevant for the purpose of this case are that the respondent No.1 was appointed as conductor in 1965 and was promoted as Assistant Depot Clerk (ADC). On 6.6.1992 at about 11.25 a.m., Sri Zaheer Ahmed, Superintendent (Accounts) checked the bus cash in Hyderabad-II depot and alleged that a sum of Rs.11,715/- was taken by the first respondent from J.C.Mouli another ADC when the latter was working at cash counter keeping two vouchers for Rs.8,000/- and Rs.3,715/- on the plea of replacing the cut notes without permission of the competent authority. On the basis of this allegation a charge sheet was served on the petitioner with two charges which are extracted hereunder:

- “ 1. For having taken an amount of Rs.11,715/- from Sri J.C.Mouli, E-33536, ADC working at cash counter on 6.6.1992 duly keeping two vouchers for Rs.8,000/- and Rs.3,715/- separately. Thus misappropriating the bus cash which constitutes misconduct under Regulation 28(x) of APSRTC (Conduct) Regulations, 1963.
2. For having taken an amount of Rs.11,715/- from the cash keeping two vouchers for Rs.8,000/- & Rs.3,715/- separately

without competent authority and permission which constitutes misconduct under Regulation 20(x) of APSRTC (Conduct) Regulations, 1963.”

After enquiry a final order was passed on 6.11.1992 removing the first respondent from service. Appeal and review applications filed by the first respondent having been dismissed on 6.11.1992 and 31.12.1994 respectively, the first respondent moved the Labour Court, i.e., the 2nd respondent by way of I.D.No.26 of 1995. The 2nd respondent after detailed consideration of the entire material and evidence on record set aside the orders of removal as confirmed by the appellate and revisional authorities and directed the reinstatement of the first respondent with all attendant benefits and continuity of service.

Heard Sri V.S.K.Rama Rao, learned counsel representing Sri V.T.P.Prasad for the petitioner and Sri G.Vidyasagar learned counsel representing respondent No.1.

Learned counsel for the petitioner submitted that the Labour Court committed error in interfering with the punishment imposed by the departmental authorities on the first respondent. He further submitted that the evidence on record was considered by the enquiry officer who found the first respondent guilty of misconduct under both the charges framed against him and the action of the disciplinary authority in accepting the findings of the enquiry officer do not suffer from any error warranting interference by the second respondent.

Sri G.Vidyasagar submitted that the second respondent is entitled to go into the entire material and re-appreciate the evidence on record and that the second respondent having done this exercise gave categorical findings that the finding of the enquiry officer is contrary to the evidence recorded by him and that the order of the disciplinary authority imposing the punishment on the petitioner was wholly illegal.

He therefore submits that the well considered award of the second respondent does not call for interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

From a perusal of the award of the second respondent it is clear that the second respondent has considered the entire evidence on record. The main charge against the first respondent is that he has unauthorisedly taken Rs.8,000/- and Rs.3,715/- from another ADC who was dealing with the bus cash and misappropriated the same. The Labour Court in order to test the correctness or otherwise of the charge went into the depositions of Sri .C.Mouli, ADC from whom the first respondent had taken cash, Sri B.Ramachandra Rao, Depot Clerk and Sri V.A.Goud another Depot Clerk all of whom deposed that there is practice of the ADCs requesting for replacing of fresh notes with cut notes and that for the purpose of disbursement of salaries to the staff of the depot the first respondent has while passing two vouchers requested for and received cash of the said two amounts from J.C.Mouli, ADC. The second respondent also considered the evidence of Sri Zaheer Ahmed, Superintendent (Accounts), who categorically stated that the ADC J.C.Mouli produced two hand receipts of Rs.8,000/- and Rs.3,715/- issued by the first respondent. On the basis of the analysis of the entire evidence the second respondent has arrived at the finding that the conclusions recorded by the enquiry officer are much against the admission of the witnesses examined by him and the fact available on record. It is relevant to extract the part of the award in which the second respondent has discussed the entire evidence hereinbelow:

“ Sri J.C.Mouli during the enquiry has clearly stated that he paid amount to the petitioner R.S.Reddy with permission of the depot Clerk. In fact Rs.,3,000/- was paid by Sri J.C.Mouli in the presence of Superintendent (A). Even Sri B.Ramachander Rao, has stated in the enquiry that:

'Sri J.C.Mouli, ADC has informed him about vouchers given by the R.S.Reddy for payment of rupees mentioned in the vouchers at about 10.30 hours, while I was going to bank to remit bus-cash and I have given him instructions to accept the vouchers for payment on 6.6.1992.

It is also fact that Sri J.C.Mouli, ACD informed him that Sri R.S.Reddy, ADC wanted the said amount since R.S.Reddy, ADC has no amount with him for payment of salary because the cut notes was from 7 to 8 thousand. So the payment of salary of cash to Sri R.S.Reddy, ACD in lieu of vouchers made by the ADC J.C.Mouli was done with my knowledge and as per my instructions only during the enquiry a clarification was given by the DC. It is as follows:

'ADC to DC: It is not a fact that I have given Rs.3.715/- and Rs.8,000/- to R.S.Reddy, ADC who had given hand vouchers when the said amount was paid duly bringing to your knowledge and with your permission on 6.6.1992.

DC: Yes, it is a fact'

The other witness examined in the enquiry is other D.C.Sri V.A.Goud. He has clarified that there are instances where cut notes were exchanged worth of Rs.10,000/- to 12,000/-. Further ADC has informed that he kept the fresh notes for salary disbursement after duly handing over vouchers with ADC on duty. He further stated that "I informed the DC that I am going to bank to get exchange the cut notes". He further stated that he handed over the cash in the chest and asked the petitioner to disburse the salary to the staff members, and during the disbursement of salary Sri V.A.Goud noticed several cut notes worth of Rs.6,000/- to Rs.7,000/-. While going to bank Sri V.a.Goud, advised the petitioner to exchange cut notes if possible in bank otherwise he will take the amount from ADC to the extent of cut notes. Thus it proves that there is proper authorization and permission from the DC for exchange of fresh notes after handing over vouchers to the ADC handling cash. Sri V.A.Goud, has further stated that it is a general practice in Hyderabad-2 depot to exchange the cut notes in the banks now and then from the accumulation of cut notes and for this performance the DC (E) him and R.S.Reddy were engaged independently. Sri R.S.Reddy, the petitioner is not only assisting Sri V.A.Goud but also DC (E) and also acted as independent DC in their absence. This what spoken to by sri V.A.Goud. he further said that the petitioner informed him that he got the same from ADC for disbursement of salaries. These facts would clearly confirm that the petitioner was working more or less as a Depot Clerk. He further clarified that this is done with the permission of his superiors.

7. The other ADC Sri J.C.Mouli has also clarified in his statement before the Enquiry Officer that:

'it is a practice in H-2 depot taking the cash from on duty ADC by the DCs, ADCs and above the rank of Depot Clerks.'

In so far as shortage of Rs.11,715/- in the cash held by Sri J.C.Mouli

on 6.6.1992, Sri Zaheer Ahmed has stated that Sri J.C.Mouli produced two hand receipts of Rs.8,000/- and Rs.3,175/- issued by Sri R.S.Reddy, petitioner after taking cash stating that it is in lieu of cut notes. Therefore the conclusions recorded by the Enquiry Officer are much against the admissions and facts available on record. Sri Zaheer Ahmed has clearly clarified that there was no cash shortage of any sort and that total physical cash is with ADC is Rs.27,456-50 ps. So the report of the Enquiry Officer is not only incorrect but also untenable.

8. Sri Zaheer Ahmed, has further stated that the cut notes were kept in the chest and the keys were with the Depot Clerk (E) who went to the bank. He further stated that he sealed the cash chest and checked it in the presence of Depot Clerk (E) after his return from bank at 15.00 hours, and cut notes worth of Rs.1,415/- were only found. The remaining cut notes were also shown and they were available with the other ADC and they were under the process of pasting.

9. All the DCs and ADCs have stated that it is a common practice in Hyderabad-2 depot to give vouchers to receive fresh notes and contrary conclusions arrived at by the Enquiry Officer are not correct.

10. Further Sri V.A.Goud, DC has mentioned that after he has disbursed the salaries to the staff from 1st and 3rd June 1992 availed two days off on personal work and while going on off duty handed over the keys of the chest box to the petitioner Sri R.S.Reddy to disburse the salaries to the staff in his absence on 6.6.1992. He came to the depot at 11.00 a.m., and handed over the keys to the petitioner R.S.Reddy, DC. He also stated that he had not given any cut notes to the petitioner. The check was conducted at about 11.25 a.m. Sri V.A.Goud, DC has taken keys of the chest box on 6.6.1992 and went to the bank. The above discussion would clearly show that there is no discrepancy in the cash.

11. In the above circumstances when the cash is very much available in a total of Rs.27,456-50 ps., including the amount of Rs.11,715/- made up of Rs.8,000/- received under one voucher and Rs.3,715/- received under second voucher representing the cut notes handed over by the petitioner to the other ADC J.C.Mouli, there cannot be any inference to be drawn to hold that this amount was misappropriated by the petitioner. The entire procedure as to manner in which the money is drawn from the bank or the salaries disbursement is made in the APSRTC and the manner in which the amount is deposited in State Bank of Hyderabad, Gunfoundry, would clearly prove the dealings in between DCs and ADCs and what is done is clearly done in accordance with the recognized procedure and it cannot be said by any stretch of imagination, on appreciating of the circumstances of the case, that there was misappropriation of

Rs.11,715/- on 6.6.1992 and the keeping of vouchers representing Rs.11,715/- amounted to the petitioner's acting without permission from competent authority, which is constituted to the charges are not only frivolous but also deliberate. There is absolutely no misappropriation of bus cash and the petitioner dealing with such cash without permission of competent authority constituting charges 1 and 2."

After carefully going through the award passed by the Labour Court – the second respondent herein, I am of the considered view that the findings of the second respondent are based on a thorough analysis of the evidence and sound reasoning. The award therefore is not liable to be interfered with by this Court while exercising the jurisdiction under Article 226 of the Constitution of India since there is no error from which the award suffers.

For the reasons aforementioned, the writ petition is liable to be dismissed and it is accordingly dismissed.

C.V.NAGARJUNA REDDY,J

Dt :18.4.2007
Mdaa.